**APPENDIX A**

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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Docket No. 01-6054

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UNITED STATES OF AMERICA,
*Plaintiff-Appellee*,

and

CHARLES M. CARBERRY,
*Appellee*,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, *et al.*,
*Defendants*,

and

ED J. MIRELES AND PAUL ROA,
*Appellants*.

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Argued: Oct. 15, 2002
Decided: Jan. 02, 2003

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Before JACOBS, SACK, KATZMANN, Circuit Judges.

PER CURIAM.

Edward J. Mireles and Paul J. Roa appeal from a final order of the United States District Court for the Southern District of New York (Preska, J.), which granted an application of the Independent Review Board ("IRB") for entry of an order upholding charges and sanctions imposed against Mireles and Roa, both members and former officers

of the International Brotherhood of Teamsters ("IBT"). For the following reasons, we affirm.[1]

## BACKGROUND

Facts relevant to this appeal have been summarized previously in numerous opinions of this Court, familiarity with which is assumed. *See, e.g., United States v. IBT* ("IRB Rules"), 998 F.2d 1101, 1105-06 (2d Cir.1993); *United States v. IBT* ("1991 Election Rules Order"), 931 F.2d 177, 180-82 (2d Cir.1991); *United States v. IBT* ("Friedman & Hughes"), 905 F.2d 610, 612-15 (2d Cir.1990).

In the proceedings at issue in this appeal, the IRB found that Mireles, the Secretary-Treasurer and principal officer of IBT Local 952 from 1989 until 1999, instituted a policy requiring IBT members who served as business agents of the local union to make dues payments on an untimely basis. Since a member who pays dues late is ineligible to run for a local office position, Mireles thereby disabled his business agents from challenging him in a union election. The district court's order upheld the IRB's findings that Roa enforced Mireles' scheme, and that Mireles lied under oath about his role in it and encouraged others to do the same. The court affirmed the IRB's ruling barring Mireles and Roa from holding any position as IBT officers for seven and four years, and suspending them from IBT membership for four and two years, respectively.

On appeal, appellants Mireles and Roa argue that (1) the IRB lacked authority to sanction their alleged conduct, and

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[1] Our decision on this appeal originally appeared in an unpublished summary order, issued on October 23, 2002. The government subsequently moved to have the decision published. Because we are persuaded that this decision may have some precedential value, we grant the motion and publish our disposition.

(2) the IRB's finding that Mireles and Roa brought reproach upon the IBT is not supported by substantial evidence.

I.

We conclude that the IRB had authority to sanction the conduct at issue. This proceeding arises under the Consent Decree that resolved claims brought by the United States against the IBT and other defendants under the civil remedies provision of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964. *See* 1991 Election Rules Order, 931 F.2d at 180-81. The Consent Decree implemented a number of measures "premised on the notion that [standards imposed by federal labor law] were not sufficient to rid the IBT of corruption and the influence of organized crime, or to bring democracy to the IBT." *United States v. IBT* ("Carey Disqualification"), 988 F.Supp. 759, 768 (S.D.N.Y.1997), *aff'd,* 156 F.3d 354 (2d Cir.1998). The purpose of the reforms was to achieve the goal "that the IBT . . . be maintained democratically, with integrity and for the sole benefit of its members without unlawful outside influence." *United States v. IBT* ("IRB Rules"), 803 F.Supp. 761, 767 (S.D.N.Y.1992), *aff'd as modified,* 998 F.2d 1101 (2d Cir.1993).

The Consent Decree provided for the establishment of the IRB, "a permanent institution vested with power to investigate and eradicate corruption, and to monitor the IBT's attempts to eradicate corruption." *Id.* at 780. Pursuant to the Consent Decree, the IRB's authority is co-extensive with that of the IBT General President and General Executive Board ("GEB") under the IBT Constitution. Since the IBT Constitution authorizes the IBT General President and GEB "to interpret and apply" the IBT Constitution and "to decide all questions of law thereunder," the IRB's authority "necessarily includes the final authority to decide what constitutes an offense subject to discipline under the IBT

Constitution." *Friedman & Hughes,* 905 F.2d at 619 (citing IBT Const. Art. VI, Sec. 2(a), Art. IX, Sec. 1). Therefore, the scope of the IRB's power under the Consent Decree is not limited to violations of federal labor or criminal law. The Consent Decree recognizes that "conduct . . . that brings reproach upon [the IBT]," in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution, is "within the [IRB's] investigatory and decisional authority." *See IRB Rules,* 803 F.Supp. at 802 (stating and approving rules governing operation of IRB), *aff'd in relevant part,* 998 F.2d 1102 (2d Cir .1993).

The IRB therefore had authority to investigate and bring disciplinary charges when it learned of the scheme involving dues default, and suspected that the scheme brought reproach upon the IBT.[2] Mireles and Roa contend that their conduct was not unsavory because it was not inconsistent with the Labor- Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 401 *et seq.* ("LMRDA"), and therefore did not bring reproach upon the union, citing *Finnegan v. Leu,* 456 U.S. 431, 102 S.Ct. 1867, 72 L.Ed.2d 239 (1982), and *Bloom v. Local 952,* 783 F.2d 1356 (9th Cir.1986). In *Finnegan,* the

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[2] When the IRB, pursuant to its investigatory powers, first learned about Mireles' and Roa's alleged improper conduct, it did not immediately bring disciplinary charges but conducted an evidentiary hearing and issued an investigative report recommending, *inter alia,* that the IBT bring charges against Mireles and Roa. Two IBT panels heard evidence regarding the charges; the first rendered no decision, and the second found that the charges had been sustained against Mireles but not against Roa. The IBT's General Executive Board ("GEB") adopted the panel's findings and recommendations with respect to Mireles, and the IBT's president adopted the findings and recommendations with regard to Roa. On appeal, the IRB declared the IBT's decisions regarding Mireles and Roa to be inadequate, and, upon finding that the actions of the GEB and its president were inadequate, scheduled its own hearing on the charges. The hearing took place on April 17-18, 2000, and the IRB's decision, dated October 17, 2000, stemmed from the hearing.

Supreme Court considered "whether the discharge of a union's appointed business agents by the union president, following his election over the candidate supported by the business agents, violated the [LMRDA]," 456 U.S. at 432, and ruled that because the LMRDA protects the rights of union members as members and not as union employees, the termination of business agents because of their support for a rival candidate did not violate the LMRDA so long as the business agents retained their membership rights. *Finnegan,* 456 U.S. at 438- 41. In *Bloom,* the Ninth Circuit (relying on *Finnegan* ) held that a business agent of Local 952 who was discharged because he supported a rival candidate in the local union's election failed to state a claim for relief under the LMRDA. 783 F.2d at 1359 & n. 3.

*Finnegan* and *Bloom* are distinguishable. The issue here is not whether the business agents have an actionable claim for impairment of their membership right to stand for election, but whether the conditioning of union employment on relinquishment of a membership right brought reproach upon the union. The *Finnegan* and *Bloom* courts held only that the business agents there had no cause of action under the LMRDA, because although they lost their positions as business agents, they retained their rights as members. Here, the business agents were deprived of their rights as members to run for election to union office. *See Carey Disqualification,* 156 F.3d at 361 (holding that act of making a person ineligible to seek union office "affects him as a member" under federal labor law). We think that the IRB's findings that Mireles and Roa secretly affected the rights of members are sufficient to support its exercise of jurisdiction, which is not limited to violations of federal labor law but is instead, under the Consent Decree, coextensive with that of the IBT General President and General Secretary-Treasurer.

II

We conclude that substantial evidence supports the IRB's findings that Mireles and Roa brought reproach upon the IBT. Substantial evidence is something more than "a mere scintilla" but something less than "the weight of the evidence," *see United States v. IBT* ("Simpson"), 120 F.3d 341, 346 (2d Cir.1997) (internal citations omitted), and the "test is deferential," *United States v. IBT* ("Giacumbo"), 170 F.3d 136, 143 (2d Cir.1999). "Substantial evidence includes such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Simpson,* 120 F.3d at 346 (internal citation and quotation marks omitted). Inferences that the IRB draws from facts are "discretionary and can only be disturbed if they are arbitrary and capricious." *Giacumbo,* 170 F.3d at 143 (internal quotation marks omitted).

At a hearing conducted by the IRB on April 17 and 18, 2000, the Chief Investigator called five witnesses, introduced into evidence transcripts of sworn testimony of twelve current and former members of Local 952, and submitted printouts from the IBT's computer system.[3] Mireles and Roa called six witnesses and testified in their own defense. Ten witnesses confirmed that Mireles was involved in a scheme that required certain business agents who were not enrolled in an automated dues "check-off" system to miss a monthly dues payment to ensure ineligibility. Computer records showed

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[3] Mireles and Roa challenge the IRB's reliance on hearsay testimony of witnesses who were not subject to cross-examination. The IRB may rely on hearsay so long as it is "reliable." *See United States v. IBT ("Boggia"),* 167 F.3d 113, 118 (2d Cir.1999); *United States v. IBT ("DiGirlamo"),* 19 F.3d 816, 823-24 (2d Cir.1994). Hearsay is "reliable" for the purposes of an IRB hearing if it is corroborated by other hearsay or non-hearsay evidence, includes specific detail, or is made under oath. *See DiGirlamo,* 19 F.3d at 823; *United States v. IBT ("Cimino"),* 964 F.2d 1308, 1312-13 (2d Cir.1992). The sworn statements at issue are sufficiently reliable. They corroborated each other and were corroborated by the TITAN records.

that before 1990 all officers, business agents, and employees of the local paid their dues by "check-off," that within three months after Mireles assumed office, business agents paid dues by "self-pay" method, and that (with one exception) "no business agent on the self-pay system was eligible to run in the 1992, 1995, and 1998 Local 952 Local officer elections." In short, the scheme at issue secretly narrowed the field of possible officers, partially insulated an officeholder from challenge, and thereby impaired the system of open competitive election to union office. We think this is enough to bring reproach upon the union.

Mireles and Roa argue the credibility and proper weight of certain testimony; however, the members of the IRB are "best equipped to evaluate the demeanor, credibility, and ultimately the culpability of those who appear before them." *United States v. IBT ("Carey & Hamilton")*, 247 F.3d 370, 380 (2d Cir.2001) (internal quotation marks omitted). "In accordance with the great deference owed to the IRB's determinations, law in this circuit establishes that a court 'will not substitute its assessment of a witness's credibility for that of the IRB.'" *Id.* (quoting *United States v. IBT ("Simpson")*, 931 F.Supp. 1074, 1096 (S.D.N.Y.1996), *aff'd*, 120 F.3d 341 (2d Cir.1997)).

## CONCLUSION

For the foregoing reasons, the order of the district court is affirmed.

## APPENDIX B

UNITED STATES DISTRICT COURT
S.D. NEW YORK

[Filed Feb. 21, 2001]

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No. 88 CIV 4486 LAP

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UNITED STATES OF AMERICA
*Plaintiffs*,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *et al.*,
*Defendants*.

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MEMORANDUM and ORDER

PRESKA, J.

WHEREAS on October 22, 1998, the Independent Review Board ("IRB") issued an Investigative Report recommending charges against: (a) International Brotherhood of Teamsters ("IBT") Local 952 Secretary-Treasurer Edward J. Mireles ("Mireles") in Los Angeles, California, for requiring IBT business agents to fail to pay membership dues in a timely manner, thus disqualifying these IBT members from running for local union office against Mireles, and for failure to cooperate with the IRB by testifying falsely at IRB sworn examinations and encouraging local officers and employees to make false statements to the IRB, thereby bringing reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution; and (b) Local 952 member Paul J. Roa ("Roa") for aiding and abetting the practice of requiring IBT business agents to fail to pay membership dues in a timely manner, thereby bringing reproach upon the IBT in violation of

Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution; and

WHEREAS on November 5, 1998, the IRB directed the report to IBT Acting General President Tom Sever ("Sever") for appropriate action by the IBT General Executive Board ("GEB"); and

WHEREAS an IBT hearing panel appointed by Sever conducted hearings in January and March 1999 and did not render a decision; and

WHEREAS an IBT hearing panel appointed by IBT General President James P. Hoffa ("Hoffa") held hearings from May 11 through May 13, 1999 at which charges were presented against Mireles and Roa; and

WHEREAS the second hearing panel issued a decision: (a) finding that Mireles brought reproach upon the IBT by requiring Local 952 business agents to miss dues payments in order to prevent them from obtaining eligibility to run for office and by testifying falsely at IRB sworn examinations, and therefore recommending that Mireles be removed from office and suspended from IBT membership for three years; (b) finding that the IRB failed to prove by a preponderance of reliable evidence that Mireles encouraged other Local Union 952 officers and employees to lie to the IRB, and therefore recommending that these charges be dismissed; and (c) finding that the IRB failed to prove the charges against Roa, and therefore recommending that the charges against Roa be dismissed; and

WHEREAS on July 30, 1999, by letter, Hoffa informed Mireles and Roa that the GEB had adopted the findings and recommendations of the hearing panel with regard to the charges against Mireles and that Hoffa had adopted the findings and recommendations of the hearing panel with respect to the charges against Roa; and

WHEREAS on August 16, 1999, Mireles filed a motion to stay the GEB decision and to appeal the decision to the IRB; and

WHEREAS by letter of September 7, 1999, Florence Hoffman, Esq. ("Hoffman") informed the IRB that Mireles had retained her as counsel and requested an opportunity to appear before the IRB on his behalf; and

WHEREAS on September 8, 1999, at the direction of the IRB, John J. Cronin, Jr. ("Cronin"), the IRB administrator, via UPS overnight mail, advised Hoffman to submit any challenge to the GEB decision for the IRB's consideration by September 27, 1999; and

WHEREAS by letter of November 1, 1999, Cronin advised the GEB that the IRB found inadequate (a) the GEB's decision with respect to the charges that Mireles had encouraged others to lie to the IRB and the sanction it had imposed on Mireles, and (b) Hoffa's decision with respect to the charges against Roa; and

WHEREAS by facsimile and letter dated November 8, 1999, the GEB and Hoffa, respectively, expressed to the IRB disagreement with the IRB's findings; and

WHEREAS by letters dated November 19, 1999, Cronin informed the GEB and Hoffa of the IRB's finding that the GEB and Hoffa had failed to remedy their respective decisions and that therefore a hearing on the charges against Mireles and Roa was scheduled for February 14, 2000 at the law offices of LeBoeuf, Lamb, Greene, & MacRae, 725 South Figueroa Street, Los Angeles, California; and

WHEREAS on November 30, 1999, by UPS overnight mail, Cronin served upon Mireles and Roa notice of the hearing scheduled for February 14 and 15, 2000, at 9:00 a.m., at the law offices of LeBoeuf, Lamb, Greene, & MacRae; and

WHEREAS on January 4, 2000, by UPS overnight mail, Cronin advised Mireles and Roa that the hearing had been rescheduled for 9:00 on February 17 and 18, 2000, at the same location; and

WHEREAS by facsimile and letter dated February 8, 2000, Glenn Rothner, Esq. ("Rothner) informed the IRB that Mireles had recently retained him as counsel and therefore requested a continuance; and

WHEREAS by facsimile and letter dated February 9, 2000, Cronin informed Rothner, Mireles and Roa that the IRB had granted the request for a continuance; and

WHEREAS by letter dated February 29, 2000, Cronin informed Rothner, Mireles and Roa that the hearing would take place on April 17 and April 18, 2000 at the Marriott Los Angeles Airport Hotel, 5855 West Century Boulevard, Los Angeles, California, starting each day at 8:30 a.m.; and

WHEREAS on April 17 and 18, 2000 the noticed hearing went forward before the IRB; and

WHEREAS at the hearing, the IRB reviewed evidence including the testimony of several current and former Local 952 officers, business agents and clerical employees, documentary evidence, and the testimony of Mireles and Roa; and

WHEREAS by Application LXXXVII, dated October 17, 2000 ("IRB Application LXXXVII"), upon finding the evidence established that Mireles and Roa brought reproach upon the IBT as charged, the IRB issued an Opinion and Decision ("IRB Opinion and Decision") (a) barring Mireles from holding a position as an officer with the IBT or any IBT-affiliated entity for seven years and suspending Mireles from IBT membership for four years, and (b) barring Roa from holding a position as an officer with the IBT or any

IBT-related entity for four years and suspending Roa from IBT membership for two years; and

WHEREAS on October 24, 2000 and October 27, 2000, through counsel, Mireles and Roa requested a stay of the IRB Opinion and Decision pending further order of this Court; and

WHEREAS by Order dated November 2, 2000, this Court offered Mireles and Roa the opportunity to submit written objections to IRB Application LXXXVII no later than ten business days from the date of the Order; and

WHEREAS by Order dated November 9, 2000, this Court denied Mireles and Roa's request for a stay; and

WHEREAS on November 15, 2000, through counsel, Mireles and Roa submitted objections to IRB Application LXXXVII; and

WHEREAS by Order dated November 20, 2000, this Court offered the Government an opportunity to respond to Mireles and Roa's objections no later than ten business days from the date of the Order; and

WHEREAS on December 5, 2000, the Government responded to the objections and asked this Court to grant IRB Application LXXXVII; and

WHEREAS this Court reviews determinations made by the IRB under an "extremely deferential standard of review," *United States v. IBT ("Simpson")*, 120 F.3d 341, 346 (2d Cir.1997); and

WHEREAS having reviewed the IRB Opinion and Decision and all accompanying exhibits, as well as the submissions to this Court by the parties, this Court finds that, contrary to the claims of Mireles and Roa, (a) the IRB properly exercised its disciplinary authority in this case, as the IRB's jurisdiction is not limited to violations of federal law, *see United States v. IBT ("Ligurotis")*, 814 F.Supp. 1165, 1182-83 (S.D.N.Y.1993), and (b) "substantial

evidence" supported the IRB's factual findings, and the IRB's determinations of credibility of witnesses and reliability of evidence were not "arbitrary and capricious," *United States v. IBT ("Giacumbo")*, 170 F.2d 136, 143 (2d Cir.1999); *United States v. IBT ("Senese & Talerico")*, 745 F.Supp. 908, 914 (S.D.N.Y.1990), *aff'd*, 941 F.2d 1292 (2d Cir.1991); and

WHEREAS having reviewed the sanctions imposed by the IRB, this Court finds that the sanctions are proportionate to the severity of the misconduct of which Mireles and Roa are guilty; and

WHEREAS accordingly, this Court finds that IRB Application LXXXVII should be granted;

IT IS HEREBY ORDERED THAT Application LXXXVII of the Independent Review Board regarding the charges and sanctions imposed against Edward J. Mireles and Paul Roa is GRANTED.

SO ORDERED.

**APPENDIX C**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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88 Civ. 4486 (DNE)

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UNITED STATES OF AMERICA,
*Plaintiff,*

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *et al.*,
*Defendant.*

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OPINION AND DECISION OF THE
INDEPENDENT REVIEW BOARD

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IN RE: EDWARD J. MIRELES
PAUL J. ROA
IBT LOCAL 952

## I. INTRODUCTION

On April 17 and 18, 2000, the Independent Review Board ("IRB") held a hearing on certain charges against International Brotherhood of Teamsters ("IBT") Local 952 Secretary-Treasurer Edward J. Mireles ("Mireles") and Local 952 member Paul J. Roa ("Roa") in Los Angeles, California. The charges and the hearing arise from the following fact: and circumstances.

On October 22, 1998 the IRB issued an Investigative Report with the accompanying Exhibits and forwarded the same to Mr. Randy Cammack, President of IRB Joint Council 92, recommending charges against Respondents Mireles and Roa. On November 5, 1998 the IRB redirected the report to

IBT Acting General President Tom Sever ("Sever") for appropriate action by the General .Executive Board ("GEB"), which had jurisdiction due to Mireles's position as an elected International Officer. That report was marked at the hearing before the IRE as IRB-Ex. 1.[1] The Respondents received a copy of that report.

The Charges against Mireles are as follows:

> Charge One: While Secretary-Treasurer and a member of Local 952 and the IBT, from 1990 to the present, you brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b) (1) and (2) of the IBT Constitution, to wit:
>
> While an officer and member of Local 952 and the IBT, you required Business Agents to fail to make a month's dues payment in a timely manner, thereby making them ineligible to run for office in a Local Union officer election under Article II, Section 4(a) (1) of the IBT Constitution and Article VII, Section 2 of the Local Union 952 Bylaws.
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> Charge Two: While Secretary-Treasurer and a member of Local 952 and the IBT, you brought reproach upon the IBT in violation of Article II, Section 2 (a) and Article XIX, Section 7 (b) (1) and 14 (i) of the IBT Constitution, to wit:
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> While an officer and member of local 952 and the IBT you failed to cooperate with the IRB at your sworn examination testimony of October 18, 1996 when you testified falsely concerning the Local's practice of

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[1] "IRB-Ex.__" refers to the exhibits of the IRE introduced at the IRE hearing on April 17.18, 2000; "E.__" refers to the exhibits accompanying the report; "CI-___" refers to the exhibits introduced at the IRE hearing; "R-___"refers to exhibits introduced by the Respondents at the IRE hearing; "Tr.___" refers to the transcript of the IRE hearing.

> requiring a business agent to miss a monthly dues payment and in encouraging the local officers and employees to lie to the IRB.[2]

The Charge against Roa is as follows:

> While a Business Agent and a member of Local 952 and the IBT, from 1994 to the present, you brought reproach on the IBT in violation of Article II, Section 2(a) and Article XIX, Sections 7(b) (1) and (2) of the IBT Constitution, to wit:
>
> While an officer and member of Local 952 and the IBT, you aided and abetted the practice at the Local which required Business Agents to fail to make a month's dues payment, in a timely manner, and thereby became ineligible to run for office in a Local Union officer election under Article II, Section 4(a) (1) of the IBT constitution and Article VII, Section 2 of the Local Union 952 Bylaws.

Two IBT hearing panels heard evidence in this proceeding. The first panel, appointed by then Acting IBT General President Sever, conducted hearings in January and March 1999. It did not render a decision. It was succeeded by a second an, appointed by IBT General President Hoffa ("Hoffa"), which held hearings from May it through May 13, 1999.

In its decision ("Decision") the second panel found as to the first charge, that, with Mireles' knowledge, involvement and consent, a policy existed at Local 952 from early 1990 which required Business Agents who were not also members of the Local's Executive Board to miss a dues payment during the appropriate candidate eligibility periods preceding the Local Union's election of officers in 1992, 1995 and 1998. On the other charge against Mireles, the panel found

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[2] This testimony was taken by the IRS's Chief Investigator's office.

that he had lied at his 1996 sworn IRS Chief Investigator's examination but that he had not encouraged other Local 952 members to lie to the Chief Investigator. The hearing panel thus recommended that charge be dismissed. The panel further recommended that Mireles be removed from office and be suspended from IBT membership for three years.

As to the charge against Roa, the panel found that charge had not been sustained and recommended that it be dismissed.

On July 30, 1999, Hoffa wrote Mireles and Roa that the GEE had adopted the findings and recommendations of the hearing panel with regard to the charges against Mireles, and that he, Hoffa, had adopted the findings and recommendations of the hearing panel with regard to the charge against Roa.

On August 16, 1999, Mireles filed a motion to stay the GEB decision and to appeal the GEB decision to the IRB, alleging that there was a conspiracy to remove him from office and that certain Local 952 members testified falsely at their sworn IRB examinations and before the IBT hearing panel, with the purpose of having Mireles removed from office.

By letter of September 7, 1999, Florence Hoffman, Esq. retained her as counsel on his appeal from the GEB decision, and she requested an opportunity to appear before the IRB on Mireles' behalf. By letter dated September 8, 1999, the IRB advised Hoffman to submit any challenge to the GEE decision for the IRB's consideration by September 27, 1999.

However, before any action resulted from Hoffman's letter, by letter of November 1, 1999, the IRB advised the GEB that it found inadequate the GEB's decision concerning Mireles both as to its finding on "the failure to cooperate with the IRB charge" and as to the three-year suspension sanction imposed. The IRB also advised Hoffa that it found his decision on Roa inadequate.

By letter dated November 8, 1999, the GEB stated that it had found that Mireles had failed to cooperate with the IRB in that he had testified untruthfully in the earlier proceeding but that it had not found that he had encouraged others to lie to the IRB's Chief Investigator. It deemed the originally imposed sanction appropriate. As to Roa, Hoffa adhered to his original decision and affirmed the dismissal of the charge against Roa.

On November 19, 1999, the IRE advised Hoffa that the GEB (with regard to Mireles) and Hoffa (with regard to Roa) had failed to ("Hoffman"), an attorney, informed the IRB that Mireles had remedy the defects in their decisions. The IRB scheduled the matter for a de novo hearing on February 14 and 15, 2000, and on November 30, 1999, notified Mireles and Roa that the hearing would be held in Los Angeles, California. Subsequently, the IRB notified Mireles and Roa, by letter of January 4, 2000, that the hearing in Los Angeles would be held on February 17 and 18, 2000.

In his letter of February 8, 2000, to the IRB, Glenn Rothner, Esq. ("Rothner") notified the IRE that he was representing the Respondents and asked that the hearing be postponed. The IRE, by letter of February 9, 2000, notified Rothner, Mireles and Roa that the hearing would be rescheduled and, by letter of February 29, 2000, notified Rothner, Mireles and Roa that the hearing would be held on April 17 and 18, 2000 at the Marriott Los Angeles Airport Hotel; and it did go forward on those dates.

## II. IRB BEARING OF THE CHARGES

At the hearing before us, the IRB Chief Investigator's Special Counsel, Dennis Milton, Esq. ("Milton"), introduced the transcripts of the sworn 1996 and 1998 testimony of twelve current and former members of Local 952, taken by the Chief Investigator's representative on the dates indicated: James Boardman ("Boardman") (October 8, 1996 and

September 2, 1998) IRE-Ex. 1 (at E. 4 and 5); Billie Barnes ("Barnes") (October 11, 1996 and September 2, 1998) IRB-Ex. 1. (at E. 39 and 8); Rosie Frias ("Frias") (October 11, 1996 and August 31, 1998) IRE-Ex. 1 (at E. 38 and 15); Grant Ruff ("Ruff") (October 8, 1996 and September 28, 1998) IRB-Ex. 1 (at E. 6 and 7); Frank Sevilla ("Sevilla") (October 11, 1996 and August 31, 1998) IRE-Ex. 1 (at E. 37 and 13); Michael McDonald ("McDonald") (October 8, 1996) IRB-Ex. 1 (at E. 11); Gloria Smith ("Smith") (October 11, 1996 and August 31, 1998) IRB-Ex. 1 (at E. 40 and 12); Jerry Wiley ("Wiley") (September 2, 1998) IRB-Ex. 1 (at E. 9); James King ("King") (September 1, 1998) IRB-Ex. 1 (at E. 10); Sharon Sanzaro ("Sanzaro") (August 31, 1998) IRB-Ex. 1 (at E. 14); Mireles (October 11, 1996 and September 28, 1998) IRB-Ex. 1 (at E. 1 and 2); and Roa (September 28, 1998) IRE-Ex. 1 (at E. 3). The Chief Investigator also introduced at the hearing before us transcripts of the sworn IBT hearing testimony of Boardman (CI-1), Barnes (CI-2), King (CI-3), Frias (CI-4), Ruff (CI-5), Sevilla (CI6), McDonald (CI-7) and Smith (CI-8). However, we did not review these (except to the extent Respondents' counsel read the excerpts into the record in examining witnesses) and our decision is not based upon the testimony contained therein. The Chief Investigator also called as witnesses at the hearing before us, James Reilly, Ruff, McDonald, Sevilla and Smith, and introduced certain documentary evidence, including TITAN printouts reflecting IBT members' dues status at the time of the October 22, 1998 IRB report.

The Respondents at the hearing before us called as witnesses Hoffman, the previous attorney for Mireles; Harry Ashley ("Ashley"), Local 952's President and a Business Agent during the relevant time period; Local 952 members James Fitzgerald ("Fitzgerald") and Marvin Anderson ("Anderson"); Carmen Arce ("Arce"), Local 952's Office Manager; Michael Patton ("Patton"), a Business Agent of Local 952; and, finally, Mireles and Roa.

The IRS called Boardman as a witness.

A. The Evidence From the Chief Investigator's Investigation Leading to the Charges

Before addressing the testimony heard by us at the April 1718 hearing, it will be helpful to an understanding of this matter to examine in some detail the sworn testimony taken by the Chief Investigator's representatives in 1996 (Ms. Celia Zahner) ("Zahner") and 1998 (Milton) upon which the Chief Investigator relies in the proceeding before us.

1. The 1996 Testimony

On October 8, 1996, the Chief Investigator's counsel, Zahner, took sworn testimony of Ruff, Boardman and McDonald. Ruff, IRB-Ex. 1 (at E. 6), who was no longer a member of Local 952, testified about the so-called "dues policy," that forced staff members to miss a month's payment of dues during a two-year period immediately preceding a Local 952 election, thus making the member ineligible to run against Mireles. Ruff named Boardman, Mireles's Coordinator,. as the person who told Ruff and others that it was time to miss a dues payment. Elaborating, Ruff said that he thought that not only he but others had conformed to this policy but that one night at dinner Sevilla said he was not going to accept the policy and this led to a fist fight between Sevilla and Ruff. Ruff thought Mireles would be upset about this but instead Mireles, apparently pleased that Ruff had supported the policy, rewarded Ruff with a new car. Later the same day, October 8, 1996, Boardman testified. IRE- Ex. 1 (at E. 4). He, like Ruff, was no longer a member of Local 952. He stated that he had helped elect Mireles in 1989 and when Mireles took office in January 1990 as Local 952's Secretary-Treasurer, he named Boardman as his Coordinator. A11 the Business Agents reported to him. He stated that, at the direction of Mireles, after Business Agents had gone to self-pay in early 1990, he had been directed by Mireles to

implement the dues policy (which included having the Business Agents go on self pay of dues instead of check-off and then miss a dues payment so that they would be ineligible to vote or run for office). He added that there had been a fight over this policy between Sevilla and Ruff, and that Ruff got a new car out of this, as Ruff had testified.

McDonald was the other witness whose sworn testimony was taken on October 8, 1996 by Zahner. IRB-Ex. 1(at E. 11). It is noted that, unlike Ruff and Boardman, McDonald did not later testify in 1998, but he did testify before us on April 17, 2000, as did Ruff and Boardman. He was a member of Local 952 in 1996 and worked as a Business Agent for only a short time, from February 1996 to July 1996. He decided to terminate his position because there were many things about the Local he did not like. Having previously heard from Ruff and Boardman about the dues policy, Zahner asked McDonald if there was such a policy and he answered that there was. He stated that Roa (Boardman had by now left Local 952) was now the person who told everybody that they had to miss a month s dues. When McDonald asked Roa why this was so, Roa told him that this meant he would not be eligible to run in the next election. McDonald said Roa possessed two guns. Tying in with what Ruff and Boardman had testified about, what led to a fight between Ruff and Sevilla, McDonald said Sevilla complained all the time about the dues policy but that he, McDonald, felt that Mireles nonetheless kept Sevilla because of his experience as a Business Agent.[3]

Ruff gave sworn testimony to the Chief Investigator again on September 28, 1998 and Boardman again on September 2,

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[3] Ruff, Boardman and McDonald were not subject to the same impeachment that Sevilla, Frias, Barnes and Smith faced when they testified in 1998, *see* pp. 11-16, *infra,* and Sevilla and Smith faced when they testified before us, that is, that they had lied in their 1996 testimony. *See* pp. 22-26, *infra.*

1998. Before examining their 1998 testimony, however, we shall first examine other testimony given in 1996 by Local 952 members to Zahner, the Chief Investigator's counsel.

The first of this group was Barnes, who testified on October 11, 1996, three days after Ruff, Boardman and McDonald had testified. IRB-Ex. 1 (at E. 39). Unlike the procedure three days before, Barnes was accompanied by Robert M. Baptiste ("Baptiste"), her counsel.[4]

As Office Manager Barnes supervised the office staff. She was asked by Zahner about Local officers signing blank checks; vacations; use of the Local's automobiles; guns; credit cards and use for personal expenses; and tickets for sports events. No questions were asked about the dues policy.

Frias also testified on October 11, 1996. She was also accompanied by Baptiste. She told Zahner she was a trustee of the Executive Board of Local 952. She never saw a woman named Kim Barton drive Mireles' car; she never saw a gun on the Local's premises; she did not use a Local credit card; and she was never asked to contribute to Mireles' campaign fund. She also was asked about sports tickets. As with Barnes, Zahner asked Frias no questions about the dues policy of the Local.

Smith also testified on October 11, 1996, accompanied by Baptiste. IRB-Ex. 1 (at E. 40). As with Barnes and Frias, Smith was not asked about the Local 952's dues policy. She was a Trustee and Business Agent of Local 952. She was asked about the Local's vacation policy; use of Mireles' car by Kim Barton; use of credit cards; contributions to Mireles' campaign fund (she said it was voluntary) and sports tickets.

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[4] Baptiste also appeared as counsel for others who testified on October 11, 1996: Mireles; Smith; Sevilla; and Frias. When Roa testified before the Chief Investigator on September 28, 1998 and Mireles on that same date testified again, Baptiste represented both. Baptiste represented no one else in their 1998 testimony.

Sevilla was the next and last to testify on October 11, 1996; he was also accompanied by Baptiste. IRB-Ex. 1 (at E. 37). Sevilla said he was a Business Agent of Local 952. He, too, was asked about the Local's vacation policy and whether he knew Kim Barton and whether she had driven Mireles' car (he said he had not seen her do this). Zahner then departed from her procedure with the previous witnesses that day and asked if he, Sevilla had ever missed paying monthly dues. (It is noted that on October 8, Ruff and Boardman had told Zahner not only about the dues policy but also Sevilla's resistance to it, and about the fight it led to between Sevilla and Ruff.) He said he had, but that he was not encouraged to do so. He said there was no particular reason for having missed the payment, and Zahner did not pursue the matter further. He too was asked about credit card use and campaign contributions for Mireles (he said Boardman asked him to make a contribution but no pressure was put on him to do so) and was asked about tickets.

Mireles also testified before Zahner in 1996. *See* p. 16, *infra.*

2. The 1998 Testimony

In 1998, the Chief Investigators Special Counsel, Milton, took sworn testimony of the individuals named above and others.

In 1998 Ruff and Boardman repeated the. testimony they had given in 1996 about the existence of the missed dues scheme that began in January 1990, when Mireles became Secretary-Treasurer. Ruff IRB-Ex. 1 (at E. 7); Boardman IRB-Ex. 1 (at E. 5).

On September 1, 1998, King gave testimony before Milton, as did Wiley on September 2. IRB-Ex. 1 (at E. 10); IRB-Ex. 1 (at E. 9). Neither had testified previously. Both were Local 952 Business Agents and both stated that, after Mireles became Secretary-Treasurer of Local 952 in 1990, they had

been moved from payment of dues by check-off to self-pay and that this was followed by their being told by Boardman to miss their dues before election. King said that the purpose behind this was to insure that the Business Agents would not be eligible to run against Mireles.

Sanzaro also gave sworn testimony to Milton on August 31, 1998. IRB-Ex. 1 (at E. 14). Like King and Wiley, she had not testified before. She had become the Local 952's Office Manager in 1996, after Barnes retired. She was aware of the Local's dues policy, that Business Agents were to miss at least one month's dues within a 24-month period, and that the purpose of that was so that they would not be eligible to run for office. After she succeeded Barnes, she was directed by Roa (Boardman had left the Local) to give a TITAN printout of each Business Agent to him. Roa told her Mike Pharris ("Pharris") (a Business Agent) was going to miss a payment in February and would pay in March (of 1997). She was led to believe by Roa that if the Business Agents did not miss their dues payment, they would be terminated.

We now turn to the 1998 sworn testimony of Sevilla and others who had been represented by Baptiste when they testified in 1996, but were not now.

Led by Sevilla, Barnes, Frias and Smith decided in 1998 to contact the Chief Investigator so that they could correct their 1996 testimony. It appears it was less their conscience that moved them all in this direction than the fact that they were unhappy with Mireles' management of the Local's affairs, and Sevilla admitted that he wanted to regain eligibility since he was thinking of joining with the others to defeat Mireles in the upcoming election. As Smith put it in her testimony before us, she and the others were concerned "that the Local was [not] running properly and that . . . pretty much the only

way that we could get justice was to go to the IRB." Tr. at 278. Sevilla was the "coordinator" of this effort. *Id.*[5]

Frias and Smith, who had not been asked about the Local's dues policy in 1996, gave sworn testimony to Milton on August 31, 1998. IRB-Ex. 1 (at E. 15) ; IRB-Ex. 1 (at E. 12). Each admitted she had lied in her 1996 testimony, Frias when she testified she had used the Local's sports tickets (she had not), and when she denied having seen any officer of the Local having a gun in his possession (she had, in Roa's possession); and Smith when she said she had never seen any Local employee in possession of a gun (she had, in Roa's possession) and when she testified that her contributions to Mireles' campaign fund were voluntary (they were not voluntary, they were a condition of employment and were picked up first by Boardman and, after he resigned, by Roa). Both Frias and Smith explained their deception in the 1996 testimony on their being fearful of Mireles, who immediately after Baptiste left the room, and immediately before they testified on October 11, 1996, told Frias, Smith, Barnes and Sevilla words to the effect of "you know how to testify at tomorrow's hearing, don't you?" Frias, IRE-Ex. 1 (at E. 15,); Smith IRB-Ex. 1 (at E. 12).[6]

Both Frias and Smith went on to testify in 1998 about the Local's dues policy, confirming what Ruff, Boardman and McDonald had first testified to in 1996. Smith was particularly expansive on the subject. Smith had heard Boardman tell Business Agents that they had to miss their dues, at a time when he was speaking to Ruff and Sevilla, and would be

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[5] King's, Wiley's and Sanzaro's support in this movement against Mireles was apparently also sought and obtained by Sevilla, Barnes, Smith, Frias and Ruff.

[6] There is nothing to indicate nor do we suggest that Baptiste was involved in what we perceive to be an effort by Mireles to do "damage control" by warning that the witnesses should not give testimony hurtful to Mireles or the Local.

terminated if they did not. This was to insure that the Business Agents would be ineligible to run against Mireles in the next election. Smith said the policy was still in existence in February 1998, having heard Roa tell Pharris he had to miss his dues.

Barnes also gave testimony to the Chief Investigator, on September 2, 1998. IRB-Ex. 1 (at E. 8). As was the case with Frias and Smith, she had not been asked about the dues issue in her 1996 testimony. She now admitted that she had testified falsely in 1996 about use of the sports tickets, out of fear that telling the truth might have cost her the consulting agreement she had just entered into with Mireles and the Local. Barnes, as the Office Manager of Local 952 before and after Mireles became Secretary Treasurer, handled the TITAN system for the Local. Business Agents were, prior to 1990, on dues check-off. When Mireles became Secretary-Treasurer he made Barnes the Office Manager—this was January 1990—and shortly after that he instructed her to remove all Business Agents except Boardman (who was also Coordinator at the time) (and Mireles) from dues check-off and put them on self-pay. He did not answer her question as to why he was ordering this. Later she learned the reason for the changes. It was because the Business Agents, now that they were paying dues personally, could be directed to miss a month's dues so that they would not be eligible to run for office and their compliance could be monitored by reviewing the. TITAN records. Later she heard Boardman was the person designated by Mireles to tell the Business Agents to miss dues payments. She remained in charge of entering the dues status of each Business Agent in the TITAN system and Boardman would have her give him printouts of a Business Agent's TITAN record. Boardman would then give the printouts to Mireles. Barnes mentioned that one Business Agent, Sevilla, tried to beat the system by paying his dues the last day of the month, so the payment would not be reflected in the TITAN system until the next month, but she would

give him a handwritten receipt to show the timely payment of dues. There came a time when three Business Agents who were also on the Executive Board, Ashley, Hahn and Smith, were, at Mireles' direction to Barnes, put back on check-off. Smith had missed a monthly self-pay payment which would have made her ineligible to vote for the Mireles slate of candidates (of which she was one). However, Mireles told Barnes to give her a receipt to show she had paid when in fact she had not.

Sevilla also testified in 1998. IRB-Ex. 1 (at E. 13). Of the group led by him, only he had been asked about dues payments in 1996. He now admitted he had lied in 1996 when he said he had not been encouraged to miss dues payments (he said it was required, with Boardman telling him first and Roa thereafter to miss his dues under threat of termination). He also lied when he said there was no pressure on him to contribute to Mireles'' campaign. Boardman first, and later Roa, told him he had to contribute. He lied too when he denied ever seeing an officer or Business Agent with a gun (he saw Roa with one which he carried in an ankle holster). Asked why he had lied about these matters, he referred to the same direction from Mireles to which Frias and Smith had referred. It was clear to Sevilla that Mireles was suggesting he lie as to the subjects they had discussed at the pre-testifying meeting as likely to arise in the Chief Investigator's examination. Sevilla confirmed Barnes' statement about getting a handwritten receipt for payment of dues the last day of the month.

Mireles, accompanied by Baptiste, testified before the Chief Investigator's representative both in 1996 and 1998. IRB-Ex. 1 (at E. 1 and E. 2). In 1996, he was asked about the Local's vacation policy and his vacation time; use of his car by Ms. Barton; use of the Local's credit card; his travels; his expenses; guns; the extent he reviewed TITAN printouts (he said he reviewed them only to make sure the Business Agents

delegates and alternates to the IBT 1996 convention were eligible) ; he said they have to have their dues paid on time in the 24 months prior to the convention and he did not recall any problems with any Business Agents not having been paid up. He never encouraged any Business Agent to miss a month's dues and there was no requirement that Business Agents who were not officers must miss a month's dues in a 24-month period preceding an election. He denied there was a requirement that Local employees had to make political contributions.

Mireles testified again in 1998 on September 28, again accompanied by Baptiste . IRB-Ex. 1 (at E. 2) . By this date all of the people named above had given their 1998 testimony except for Ruff (who also testified on September 28, 1998, but who had testified in 1996 about the dues policy that had been inaugurated in 1990 when Mireles took office). Mireles confirmed that he was elected Secretary-Treasurer in 1989 and took office in January 1990. He professed to know very little about how, when he took office, dues were paid. Contrary to Barnes' testimony, he never told anyone in the Local that Business Agents should be moved from check-off payment of dues to self-pay. More specifically, he denied he ever told Barnes that dues of Business Agents were to go from check-off to self-pay. He did not recall telling Barnes to give Smith a handwritten receipt for a late payment that indicated it was timely. There has been no system while he has been Secretary-Treasurer to encourage Business Agents to miss a monthly dues payment. Others of course, had already testified that Boardman first, and then Roa, told Business Agents to do so, and Respondents have not offered any explanation of this, leaving it open to infer that it was done pursuant to Mireles' direction. He denied he directed that Smith be put back on the check-off system of dues payment (because she was on the Executive Board). He did not know how many Business Agents were on check-off in 1992, 1993, 1994 or 1995. He never told Boardman to tell

Business Agents to miss one month's dues payment. He explained his limited review of the TITAN printouts as mentioned in his 1996 testimony. He never reviewed TITAN printouts with Boardman. He never told Sevilla he was aware Sevilla was paying his dues the last day of the month. He did not meet with Business Agents in 1996 prior to the Chief Investigator's examination (at odds with the testimony of Smith, Frias and Sevilla).

Roa was also examined by Milton on September 28, 1998, and was, like Mireles, also represented by Baptiste. IRB-Ex. 1 (at E.3). He became a Teamster in 1979 and became employed by Local 952 in January 1990 as a Business Agent and organizer, hired by Mireles. He had some discussion with Boardman that Business Agents had to miss a monthly dues payment within 24-months prior to the Local election, but it was not a requirement. After Boardman left the Local, Roa stated that he probably had general conversations with Business Agents about missing monthly' dues payment but he did not recall telling any Business Agent he would have to miss a monthly dues payment nor did he recall telling Patton he would have to miss a dues payment. He denied telling Smith there was such a policy. He never told Frias he was about to tell Business Agents they needed to miss a month's dues. He denied telling Pharris he needed to miss a month's dues. He never asked Sanzaro or anyone else for a TITAN dues printout of Business Agents. He does own two guns but he never told any Business Agent he carried a gun while on the Local's premises. After Boardman left, he collected voluntary contributions for Mireles' campaign. He does not have a permit or license to carry a weapon. He did not recall when he first became aware that Business Agents in Local 952 were not being current in their dues. He then stated he might have said to Pharris and McHugh that "it was that time again, " but added that they were only talking in general. He knew the consequences of missing a dues payment within two years prior to election; you would not be eligible to run for an

officer position. Boardman told him that it was being part of a team to miss dues but he says he did not know the full deal at that time. He has never been responsible for seeing to it that Business Agents are current in their dues payments. He has never said to a Business Agent he would have to miss a monthly dues payment.

All of the foregoing transcripts of the testimony taken by the Chief Investigator's counsel, Zahner in 1996, and Milton in 1998, were admitted in evidence in the matter before us and we have deemed this testimony to be reliable hearsay under all the circumstances, overruling the Respondents' objection on that basis.[7] We will deal with the overall credibility of the witnesses in the light of all the evidence before us.

Finally, the Chief Investigator's recommendation to the IBT, at p. 1, *supra*, was also based on Local 952's TITAN dues records, which were also put in evidence before us, and to which we have referred and will refer. CI 9-32.

B. The Testimony Before the IRB

1. *The Evidence from the Chief Investigator*

Local 952 had Local officer elections in 1992, 1995 and 1998. The TITAN records before us reflect that, from the change of method of payment of dues by at least March 1990 until the filing of these charges in November 1998, no Business Agent on. the self-pay system was eligible to run in the 1992 Local 952 officer election, one Business Agent (who retired the end of 1995) on the self-pay system was eligible to run in the 1995 Local 952 officer election, and no Business Agent on the self-pay system was eligible to run in the 1998 Local 952 officer election. CI 9-32. This change to a self-

[7] Here we refer to the testimony of all of the witnesses except Mireles and Roa. Their counsel did not object to the admissibility of their testimony.

pay system served no union purpose. We conclude that the only purpose as illuminated through the testimony and corroborated by the records was to make it possible for Mireles to eliminate the threat of Business Agents running against him in subsequent elections.

As we have seen in her sworn testimony in 1998, one witness who detailed Mireles' scheme was Barnes, the Office Manager of Local 952 from January 1990 until her retirement in September 1996.[8] *See* pp. 14-16, *supra*.

Notwithstanding Barnes' having admittedly lied in 1996, *see* p. 14, *supra*, we credit her testimony given to the Chief Investigator in 1998 in that it draws support from other testimony and the TITAN records.

Ruff's testimony before us was more detailed than in 1996 and 1998 and we had the opportunity t o observe him and we found he told the truth not only before us but also in his 1996 and 1998 sworn testimony. *See* pp. 7-8, it *supra*. He also confirmed the existence of the dues policy. Tr. at 175 He worked on Mireles' campaign in 1989. Tr. at 167. At a meeting prior to the election in 1989, at which Ruff, Mireles and Boardman were present, Mireles said that once they were elected, they would be in office "forever." *Id.* In Mireles' presence, Boardman explained that the only way they could lose would be if someone from their slate ran for office against them. Boardman stated to prevent that they would have the staff miss a month's dues, thus making the staff ineligible to run. Tr. at 168-69; IRB-Ex. 1 (at E. 7).

When Ruff joined Local 952 in January 1990, he was on the dues check-off system. Consistent with Barnes' testi-

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[8] As has been noted, Sanzaro replaced Barns as the Office Manager. *See* pp. 12, *infra*. Her testimony in 1998 was supportive of that given by Barnes. A description of her testimony with regard to Roa's role in continuation of the policy after Boardman's departure is set forth below. *See* pp. 39-40, *infra*.

mony, he was put on self-pay in February 1990. Tr. at 170. In early 1991, Ruff overheard a conversation between Mireles and Boardman outside his Local office; Mireles told Boardman it was time to meet with the Business Agents and have them start missing their dues payments, but not to have everybody miss at once. *Id.* at 171.

Further, according to Ruff, Boardman immediately after this told Ruff that he needed to miss his dues payment and Ruff produced a dues payment receipt which reflected that Ruff had recently missed two payments. Later, when Mireles, Boardman and Ruff were in Mireles' office, Boardman told Mireles he had met with the Business Agents and delivered his instruction. He also said that Ruff had already missed two month's payments; Mireles and Boardman laughed. Tr. at 171; IRB-Ex. 1 (at E. 7).

Turning to the confrontation Ruff had with Sevilla, according to Barnes, Sanzaro and Sevilla, Mireles' requirement of Business Agents missing a dues payment was not readily accepted by some Business Agents. Sevilla found a flaw in the scheme which allowed him to remain in good standing although he would appear from the computerized records to have made a late payment. Sevilla knew that Barnes routinely closed down the TITAN system at 4:00 p.m. to enable the staff to close out and balance entries for the day. On several occasions, on the last day of the month Sevilla made a dues payment to Barnes after the TITAN system had closed, but while the office was still open. Barnes then gave Sevilla a handwritten receipt confirming his dues were paid that day. However, the entries on the TITAN system, entered days later, would appear to indicate a late payment. Tr. at 76; Tr. at 172; IRB-Ex. 1 (at E. 8); IRB-Ex. 1 (at E. 13); and IRB-Ex. 1 (at E. 14).

Ruff confronted Sevilla when he learned of Sevilla's ruse to circumvent Mireles' ineligibility scheme. As a result, in October 1994 or 1995, Sevilla and Ruff were involved in a

fist fight away from the Local's premises over this. Tr. at 79 and 172; IRB-Ex. (at E. 7). Smith was present at this altercation. Tr. at 226.

Ruff then said that, one month later, Mireles called Ruff into his office to discuss the fight. Boardman was present. After Ruff described what happened, Mireles directed Boardman to get Sevilla's TITAN dues printout. Boardman retrieved the printout. Mireles then advised Ruff he appreciated his loyalty. Boardman returned with the printout, which he and Ruff examined. Mireles then ordered Boardman and Ruff to check the hand receipt books in the clerk's office to determine whether Sevilla had received any. The book showed that Sevilla had received a hand receipt on at least one occasion. Tr. at 73-75; IRB-Ex. 1 at E. 7).

A short time after this meeting, Mireles called Ruff into his office. He again told Ruff that his loyalty was appreciated. Mireles told him to go with another Business Agent to select a new car, which would be assigned to Ruff. (Tr. at 175).[9]

Ruff stated that Mireles's policy of requiring a missed dues payment was first enforced by Boardman "and when Jim Boardman left, he (that is, Mireles) had Paul Roa enforce it. *Id.* at 176. Roa told Ruff he now had that responsibility. *Id.*

While it is true that Ruff was ultimately fired by Mireles, ostensibly for using a Local credit card for personal expenses, and admitted that at a point close to his termination in June

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[9] At his sworn IRB examination Mireles testified that he assigned a new Local-leased car to Ruff because he thought Ruff "had wrecked his car, and we had to get another one. As I recall, I think he had several wrecks, and to repair that year of vehicle, it was decided that we're going to get a new one." IRB-Ex. 1 (at E. 2). However, Ruff testified that the car assigned to him was in "[g]ood condition. It was fine, perfect working order. It was a 1989 Ford Crown Victoria in good working order and shape, nothing wrong with it." IRB-Ex. 1 (at E. 7). We did not find Mireles' explanation credible.

1996 he had psychological problems, we found his testimony credible and supported by the testimony of Boardman, King, Wiley, Sanzaro and others, and of course, the TITAN records. We do not overlook the fact that Ruff also testified that Mireles himself never told Ruff he had to miss dues or threatened him if he did not. Tr. at 210. The fact is that the testimony overall persuaded us that Mireles worked this scheme through Boardman and later Roa.

Smith, repeating much of which' she had testified to in 1998, *see* pp. 13-14, *supra*, also gave testimony before us. As with Ruff, we observed her testimony and found her a credible witness, not only in the testimony she gave before us but also in 1998. She confirmed the scheme, as she had also done in her 1998 sworn testimony before the Chief Investigator's counsel. Tr. at 216 *et seq*. She became employed at Local 952 as a Business Agent and Trustee on January 2, 1990, when Mireles became Secretary-Treasurer. Tr. at 217; IRB-Ex. 1 (at E. 12). The TITAN dues printout for Smith reflected that her dues were paid on a check-off basis for January 1990 (the month she began working for the Local). Tr. at 219. Thereafter, she was on a self-pay basis from February 1990 through February 1993, returning to a check-off basis (because of her Executive Board status) from March 1993 to the present. *Id.*; Tr. at 224 (Ex. CI-29). As seen in Smith's TITAN dues printout record, while she was on the self-pay system, she failed to pay her dues on time in April 1991 and May 1992. *Id.*; Tr. at 221-22; IRB-Ex.1 (at E. 8). These failures made her ineligible to run for Local office in the December 1992 election. Mireles told her she was not to miss her dues because she was on the Executive Board. Tr. at 223. Smith testified that Mireles gave her a false handwritten receipt in 1991 and Barnes prepared a false receipt in 1992 to create the appearance of timely payments in order to establish her eligibility to run for Local office. Smith, who ran on

Mireles' slate, was elected to a Trustee position in the 1992 election.[10]

At one point, she asked Mireles why she had been put on self-pay, to which he merely said "We had to be on self-pay." Tr. at 222.

In 1994, Smith observed Boardman going into the two offices next to hers. She overheard him tell their occupants, Business Agents Ruff and Sevilla, that they had to miss their next month's dues payment. IRB-Ex. 1 (at E. 12). She also heard this at a meeting of Business Agents. Tr. at 220.

Smith witnessed the fight between Ruff and Sevilla. Tr. at 226.

Smith testified that after Boardman left the Local at the end of 1995, this scheme continued. Tr. at 230. In February 1996, Roa, while sitting in her office, admitted he was instructing the Business Agents to miss their dues. *Id.* He stated that "I don't like doing this but Eddie told me I have to do it . . . ." Tr. at 232. Smith also heard Roa tell Pharris that he needed to miss his dues that very day. (Tr. at 284)

We accept Smith's testimony as credible notwithstanding her false testimony in 1996, and the impeachment of her testimony by Respondents in the hearing before us. Tr. at 234, *et seq.*

Smith explained why she lied in 1996. It was out of fear of Mireles. *Id.* at 227-29. Curiously, she said she had lied about "the dues issue" in 1996. *Id.* at 229. However, it appears from the transcript of that testimony that she was never asked about that issue.

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[10] It will be recalled that Barnes has testified that, at Mireles' direction, she gave Smith a backdated hand receipt which purported to show that Smith was not late in making her dues payments, although in fact she had been. Tr. at 16; IRB-Ex. 1 (at E. 8).

Again, notwithstanding her lying in 1996, and the reasons she conceded she had for having a prejudice against Mireles, *Id.* at 238-257,[11] we ultimately concluded she was a truthful witness before us and in her 1998 testimony, based upon our own impression of her as a witness as she testified and the several elements in the evidence that were consistent only with her telling the truth in 1998 and before us.

Another witness to the dues scheme was Michael Patton, whom Mireles called at the hearing before us. Patton started working for Local 952 in August 1994. Tr. at 586. Former Business Agent Wiley, while training Patton, told him they were not on dues check-off because they were required to miss their dues once every three years so they could not run against "the boss." *Id.* at 587. Patton had made late dues payments from 1994 through January 1999. Tr. at 587 Patton's testimony corroborated the testimony of Boardman, Seville, Barnes, Wiley, King and Smith that Mireles implemented and maintained this scheme. Wiley's statement to Patton in 1994 came at a time long before the start of the IRS investigation and is corroborated by TITAN records. CI 9-32. Mireles and the Local's officers were the only beneficiaries of this scheme.

Seville also testified before us. At the time of his testimony on April 17, 2000, he continued to be a Local 952 Business Agent. He paid his dues by check-off until early 1990 when he went t o a self-pay method. *Id.* at 69-70. He had been told by Boardman this was going to happen. *Id.* at 71. He was also told that "we would have to miss one month's dues within the 24 month period prior to the nomination." *Id.* Sevilla talked to "Eddie about it." Tr. at 72. He told Mireles this was not right, requiring a missed dues payment, but Mireles just "let me out

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[11] As noted, she had joined with Seville, and others who decided they wanted to remove Mireles and that this led to contacting the Chief Investigator to correct her 1996 testimony. Tr. at 258, 277-78.

the door." *Id.* at 73. He knew the reason for missing the dues payment; so that he would be ineligible to run for office. *Id.* at 75.

He then had the idea of paying his dues. the last day of the month, so that his payment would not be in the TITAN records, but he would get a handwritten receipt from Barnes, the Office Manager, to show the payment. Id at 75-76.[12]

Later Mireles told him he had found out about the last-day-of-the-month method of payment. *Id.* at 77. He then described his fight with Ruff after he told Ruff he was stupid for going along with Mireles' scheme. *Id.* at 79.

Sevilla next described the meeting that preceded his and others (Barnes, Frias, Smith) giving their testimony before Zahner in 1996. *Id.* at 82-3. He admitted he lied when he said he was not encouraged to miss paying his dues. *Id.* at 85.

He then described what led him and the other to contact the Chief Investigator in 1998 so that they could correct the testimony they had given in 1996:

> . . . none of us were eligible to run, we were really dissatisfied with Mr. Mireles' performance. (sic) was 1996 hearings had been on my mind for a long time. I made, I made up my mind that I was going to do something about becoming eligible for office, and there was (sic) a couple of avenues, so I came to the IRE.[13]

*Id.* at 86-7.

After Boardman left Local 952, Roa told Sevilla that he now had the responsibility with regards to the missing of dues payments by Business Agents. *Id.* at 88. Roa told him "I'm doing what Eddie is telling me to do." *Id.* at 89.

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[12] It must be noted at this juncture that during the relevant time period in this matter, Sevilla was often late in paying his dues. Tr. at 98-110, 127.

[13] This led to Barnes, Frias, Smith and others joining him in correcting their 1996 testimony. Tr. 132-33.

We found impressive the cross examination of Sevilla by Respondent's counsel in demonstrating Sevilla's animus toward Mireles and his questionable motives in changing his 1996 sworn testimony. However, the fact remains that there was overwhelming evidence from other witnesses and from the TITAN records that corroborated Sevilla's testimony about the dues scheme.

The Chief Investigator next called McDonald as his witness. He repeated much of what he had testified to in 1996. IRB-Ex. 1 tat E, 11); pp. 8-9, *supra*. After he joined Local 952 in 1996 he was on self-pay and was told by Roa that he had to miss a month's dues, Tr. at 294. He complained about this to Harry Ashley, President of Local 952, but Ashley said "that's a part of the program. It you don't like it, go talk to the boss." *Id*. at 96. He was at Local 953 only for 5-6 months and left because there were a lot of things he did not like about what was happening. *Id*. at 298. It is noted that Sevilla contacted him in 1998 and asked him if he would is k to the IRE and he said he would and he had many discussions with Sevilla about this. *Id*. at 303. We found McDonald credible and accepted his testimony as true.

2. *The Evidence From the Respondents*[14]

We have carefully considered the testimony of the witnesses called by the Respondents and the Respondents themselves. The testimony of Hoffman, if accepted, only indicates what Sevilla to a degree at least, has admitted, namely that he decided he wanted to unseat Mireles and went to the IRB in 1998 to change his 1996 testimony. Other than that, she suggested that the law firm she worked for had betrayed its clients, Local 952 and Mireles, and that she, Hoffman, had left that firm. Tr. 306-54. She shed no light at all on the issues involved in the charges, that is, why did

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[14] The Respondents called Patton and we have discussed his testimony. *See* p. 27, *supra*.

Business Agents go from check-off to self-pay after Mireles took office and whether Mireles directed that Boardman and later Roa make the Business Agents miss a dues payment.

Ashley was also called by the Respondents. Tr. 354. He started with Local 952 in January 1990 and retired in February 2000. *Id.* at 358. He denied that McDonald ever discussed the so-called dues policy with him and said he was unaware of such a policy. *Id.* at 359. No one at Local 952 ever discussed with him a policy of missing dues. *Id.* at 363. He first became aware of the charges in this matter in the fall of 1998 but did not discuss them "much" with Mireles. Contrary to his testimony on direct examination, on cross-examination he conceded that in January 1990 he was on dues check-off. *Id.* at 378. It was right after he got into office that he started paying his own dues. *Id* at 378. He then agreed his TITAN records showed he was on check-off in January 1990 and changed to self-pay in February or March 1990, *Id.* at 379, which of course is again established the basic premise of the charges. No one ever told him why the system changed. *Id.* at 380. He knew the Business Agents went on self-pay but he never asked anyone why the change was made. *Id.* at 383: "All I know is Mr. Mireles told us we were on self-pay and we had to pay our dues." *Id.* Once the charges came down, he did not believe he had a duty to investigate nor did he investigate. *Id.* at 384.

He was placed on check-off in 1993 as a member of the Executive Board. *Id.* at 385. It is noted Smith was as well. *Id.* at 224. However, Ashley did not discuss with anyone why he had been moved from self-pay to check-off at this time. He never received TITAN dues records and never knew of anyone who was late in his or her dues. *Id.* at 387.

We found it difficult to credit Ashley's testimony except as it supports the Chief Investigator's contention that there was a shift from check-off to self-pay of the Business Agents in early 1990 at Local 952.

The Respondents also called Fitzgerald. Tr. at 393. He testified that he came to work at Local 952 in 1990 as a Business Agent and early that year told Barnes he could not carry people on check-off without a signed authorization. *Id.* at 395. He said no one was told not to pay their dues. *Id.* at 396. On cross examination Fitzgerald, shown his TITAN dues record, stated that he had been fined for a late payment. *Id.* at 401. As with Ashley, we determined we could not credit Fitzgerald's testimony. It was unsupported by anyone. Moreover, it was at odds with the credible evidence we found supported the charges.

The Respondents also called Anderson as a witness. *Id.* at 404. He started at Local 952 in September 1996 as an organizer. *Id.* at 405. He first said he had heard Boardman in the hall outside the hearing room on the first day of our hearing say he was not going to testify because he was not going to perjure himself. *Id.* at 405. Then he added that when he began work in 1996 as an organizer he was told he had a choice of going on check-off or self-pay. We gave his testimony little weight, although it gave us cause for a concern about Boardman whom the Chief Investigator had apparently decided not to call as a witness.

Thus, we called Boardman as the IRS's witness. Tr 418. We read to him the testimony he had given in 1996 implicating Mireles in directing him to insure that the Business Agents missed a dues payment, relating how Seville had boasted he "found a way around the system," leading to a fight between Sevilla and Ruff, and had him state whether this testimony was true. He stated it was. *Id.* at 421-22. Respondents' counsel then cross-examined Boardman and was effective in showing Boardman's animosity toward Mireles. *Id.* at 422-51. We upheld the objection of Respondents' counsel to questions being asked by the Chief Investigator's Special Counsel because the former stated he had been led to believe "Boardman was not going to testify." Tr. at 454.

We then asked of Boardman what, if anything, he had said about perjuring himself, referring to testimony given by Anderson. *Id.* at 456-57. We satisfied ourselves that Anderson had misunderstood what Boardman had said and accepted as credible Boardman's 1996 and 1998 testimony.

The Respondents also called Arce, currently the office Manager of Local 952. Her testimony added nothing. *Id.* at 550-53.

Mireles' testimony before us was substantially the same as in 1996 and 1998 and consisted primarily of denials of what the several witnesses had said. For example, Mireles testified that he held campaign meetings at his Anaheim home in 1989 but denied the testimony by Ruff that they had discussed a plan to have Business Agents miss dues so as to render them ineligible to run for office. *Id.* at 466-67, 470. Mireles also denied that he had told Barnes to take all of the Business Agents (except Boardman and himself) off dues check-off, thereafter making an exception for members of the Executive Board. *Id.* at 471. Mireles claimed that until the issuance of the IRB Report in 1998, he was unaware that Smith had been delinquent in her dues. *Id.* at 472. Mireles also claimed he did not keep track of the payment of dues by Business Agents and did not direct Barnes to give Boardman TITAN reports. *Id.* at 472.

Mireles testified that he did not instruct any Business Agent of Local 952 to miss his dues payments and that none of his staff, including Business Agents, ever came to him and questioned him about having to miss dues payments. *Id.* at 503.

Mireles testified that he did not instruct Boardman to bring him copies of TITAN reports, nor did he instruct Sanzaro to provide TITAN reports to Roa. *Id.* at 504-505. Mireles claimed he never told Boardman if he did not like the policy of Business Agents missing dues, he could seek employment

elsewhere. *Id.* at 506. Mireles stated Boardman did not report to him on Ruff's dues payment status and also denied having a conversation with Boardman about Ruff's dues payments. *Id.* at 506, 510. Mireles again denied having told Barnes to place the Executive Board members on dues check-off in 1993. (*Id.* at 509). Mireles claimed that, after his 1996 deposition, he did not review any TITAN records to see what Business Agents were not on dues check-off.[15] Mireles maintained that he learned of the allegation that the Local's Business Agents were told to go on self-pay, and instructed to miss a monthly dues payment so they would be ineligible to run for union office, only when he received the IRB charges in October 1998. *Id.* at 525. Mireles also denied having any discussions with Smith concerning the payment of her dues, and denied causing the issuing of a handwritten receipt to her for a late dues payment. *Id.* at 533-34. We did not find Mireles to be a credible witness. Not only was his testimony inconsistent with the testimony of numerous witnesses—in each case he had denied what another witness said—but we found him to be evasive and non-responsive to questions critical to the case. Finally, we found it totally unacceptable that he seemingly knew so little about what was going on in his union.

Turning now to Roa's testimony before us, Roa joined Local 88 in 1979 and transferred into Local 952 in 1981. Tr. 554-55. Roa was a shop steward at the Alpha Beta grocery chain. On January 2, 1990, he became a Business Agent of Local 952. *Id.* The balance of his testimony before us was not substantially different from that given by him in. 1998. Tr. at 18-19.

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[15] With regard to the International convention, Mireles testified that he reviewed the TITAN records of all the Local 952 delegates but conceded that each of the 14 delegates was either an officer on dues check-off or a steward whose dues the Local paid. Tr. at 524, 540-41.

The charge against Roa alleged that from 1996 to the filing of the charges in November 1998 Roa required other Business Agents to miss a monthly dues payment to render them ineligible to run for office in the next Local Officer election.

As has been set forth herein, the testimony of Boardman, Barnes, Ruff, Sevilla, Wiley, Patton, King, McDonald, Sanzaro, and Frias, along with the TITAN records, was to the effect that Mireles implemented and maintained a scheme which required Business Agents not on dues check-off to miss a monthly dues payment to ensure ineligibility. The Local 952 TITAN dues printouts established that, with one exception, all the Business Agents missed a monthly dues payment from 1996 through 1998. (CI 9-32, CI 43-46). Five witnesses, Local 952 Business Agents Smith, Sevilla and Ruff and former Local 952 employees Sanzaro and McDonald, all testified that Roa assisted Mireles in ensuring the scheme's continuation.

According to Smith, after. Boardman left the Local at the end of 1995, Roa assumed some of his duties; and in February 1998, Roa told Smith he was telling the current Business Agents to miss their dues. Tr. at 232; pp. 14, 24-27, *supra*. Smith heard Roa tell Pharris that he needed to miss his dues, and that he had to do it that day. IRB-1 (at E. 12).

Smith also testified that Roa told her he was not happy about his responsibility, telling her, "I don't like doing this but Eddie told me I have to do it, so I have to do it." Tr. at 232. Given all the evidence, we reject Roa's testimony that he never complained to Smith that he was unhappy with the task of telling Business Agents they were required to miss making timely dues payment. *Id*. at 580.

Sevilla also testified that Roa was Boardman's successor. After Boardman left the Local, Roa instructed Sevilla to miss a month's dues payment. Tr. at 88-89; and IRB-Ex. 1 (at E. 13).

Turning to Sanzaro's testimony Ex IRB-1 at E. 14; *supra*, at 13. She too implicated Roa in carrying out Mireles's scheme after Boardman left. IRB-Ex. 1 (at E. 14); p. 12, *supra*.

In early 1997, Roa told Sanzaro that he was in charge of the missed dues payment policy, and had instructed Pharris to miss his dues payment that month and to make the late dues payment directly to Sanzaro. The Local 952 TITAN dues printout reflected Pharris missed his dues payments for the months of February and March 1997. IRB-Ex. 1 (at E. 14).

McDonald also implicated Roa in the scheme. Roa first informed him that he had to miss a month's dues so that he could not run in an election. Tr. at 294. McDonald, in his 1996 testimony described this conversation with Roa as follows:

> [The Business Agents] have to miss within the last 24 months, and Paul Roa is the one that goes around—well, he's the guy now . . . . He tells everybody, 'You have to miss a month's dues.'
>
> And I said to him, 'Why is that, Paul?'
>
> And he said, 'So you're not a threat to Eddie.'
>
> I said, 'What do you mean, a threat?'
>
> And he goes, 'Well then you won't be eligible to run in the next election if you miss your dues.'

IRB-Ex. 1 (at E. 11).

Ruff also involved Roa in the scheme. At the end of 1995, Roa assumed the role of enforcing the missed dues policy, and Roa came into Ruff's office at the Local and advised him that one of Boardman's responsibilities he had been given was to require the Business Agents to miss their monthly dues payments. (Tr. at 176).

Roa's protest that he was not involved in the scheme to force Business Agents to make late payments is not credible. At the hearing before us, Roa denied that he had ever assisted in or supervised a scheme that required Business Agents to miss their dues. *Id.* at 558. Indeed, he claimed he was unaware of the existence of that scheme. *Id.* at 559. From the documentary evidence of the TITAN records and his prior sworn examination testimony to the contrary, IRB-Ex. 1 (at E. 3), Roa's denial of the existence of the scheme is difficult to accept.

Roa also claimed that he did not know how to read a TITAN printout. *Id.* at 564. The printout reflected that Roa had missed paying his dues on only two occasions from January 1993 to the present, when Roa paid his dues for June 1994 on July 13, 1994 and when Roa paid his dues for February 1997 on March 20, 1997. (Ex. CI-25). These were in two different election eligibility periods, corroborating his involvement in the scheme. Roa acknowledged that the TITAN printout reflected he was on dues check-off for January 1990. He nonetheless thought he was on self-pay. (Tr. at 566). Once on self-pay, after he missed the dues payments, Roa did not ask Mireles to put him on dues check-off. *Id*, at 579.

Roa had previously testified in 1998 that Business Agents at Local 952 had discussed in 1996 that they were required to miss a monthly dues payment within the 24 months prior to the Local officer election. IRB-Ex. 1 (at E.3). At the hearing before us, Roa initially denied having any discussion with Boardman on this subject. Tr. at 570. Subsequently, Roa admitted Boardman told him Bob Marciel, a Teamster official at another Local, had a policy that Business Agents at another Local miss their dues. *Id.* at 571-573. Why they discussed Marciel when the scheme was rampant at their own Local, was unexplained. Again, we found Roa not a credible witness.

## III. CONCLUSION

### THE EVIDENCE ESTABLISHED JUST CAUSE TO FIND RESPONDENTS BROUGHT REPROACH UPON THE IBT AND VIOLATED TEE IBT

#### A. Mireles Required Local 952 Business Agents to Miss a Monthly Dues Payment as Charged

Through documentary evidence and testimony of current and former members of the Local, the Chief Investigator proved by the preponderance of the credible evidence the charge that Mireles required Business Agents and certain others to miss a monthly dues payment to make them ineligible for election.

The key to the scheme lay in what the Local 952 TITAN dues records reflect, that prior to 1990, the Local had followed a practice whereby the Local paid the monthly dues of its officers, Business Agents and employees through a dues check-off system. We have found that within three months of taking office as Secretary-Treasurer, Mireles changed the method of dues payment. The TITAN records reflected that by March 1990. the method of dues payment for the Local's Business Agents changed to a self-pay system, in which the individual Business Agent was required to make the monthly dues payment himself or herself. This enabled Mireles to then implement the missed dues scheme and enabled Mireles to monitor compliance with it by review of the TITAN records. These records reflect that from this change by March 1990, until the filing of these charges in November 1998 , with one exception, no Business Agent on the self-pay system was eligible to run in the 1992, 1995 and 1998 Local 952 Local officer elections.

As set forth above, the testimony of current and former Local 952 officers, Business Agents and clerical employees established Mireles' knowing role in the creation and implementation of this policy. The testimony of current and

former members of Local 952 clearly demonstrated this. The testimony of Boardman, Barnes, Smith, Ruff and Sevilla, Patton, McDonald, Frias, Sanzaro, King and Wiley is corroborated by the documentary evidence reflecting the change in the method of dues payment from dues check-off to self-pay and the missing of dues payments. Just by way of example, Mireles' knowledge of this policy was proved, among other evidence by Barnes' testimony that Mireles instructed her to remove all the Business Agents, with the exception of Boardman, from dues check-off and put them on self-pay; Boardman's testimony that Mireles directed him to issue instructions to the Business Agents placed on self-pay to miss a month's dues payment; Ruff's testimony that the required missing of dues payments was discussed in Mireles' presence, and that Mireles expressed his gratitude to Ruff for fighting with Sevilla when Sevilla attempted to evade the instructions to miss making a timely dues payment; Smith's testimony; Sevilla's testimony concerning Mireles' statements to him concerning Sevilla's failure to miss a month's dues payment; and, of course, the Local records which reflected that after Mireles became Secretary-Treasurer of Local 952 in 1990, only one non-officer Business Agent other than Boardman had been eligible to run in a Local Union officer election.

We find that Mireles did require Local 952 Business Agents to miss a dues payment as charged.

B. Mireles Failed to Cooperate with the IRB

The second IRB-recommended charge filed against Mireles alleged that Mireles failed to cooperate with the IRB, first by testifying falsely at his sworn IRB examination on October 18, 1996 concerning the Local's practice of requiring Business Agents to miss a monthly dues payment; and second, through encouraging Local officers and employees to lie to the IRB at their sworn IRB examinations in 1996.

There was abundant evidence of Mireles' failure to cooperate by giving false testimony not only at his 1996 examination, but also at his 1998 sworn IRB examination.[16] In his 1996 sworn examination, Mireles acknowledged that he had reviewed the TITAN printouts of the Business Agents and testified that the Local did not have a policy whereby Business Agents were required to miss a month's dues payment. IRB-Ex. 1 (at E. 1, pp. 124-125).

Mireles' testimony that he was unaware how the dues of the Business Agents were paid at the start of his administration, had not instructed anyone to remove the Business Agents from a dues check-off system to a self pay system, had not directed members of the Executive Board to be restored to the dues check-off system and was unaware of any policy whereby Business Agents of Local 952 were either encouraged to or required to miss a monthly dues payment was not credible in light of the control he exercised, the timing of the change, the timing of the late dues payments, and that only he and the officers of the Local benefited from the widespread is ineligibility of Business Agents and the continuation of the process through the 1998 Local 952 Local officer election cycle.

Finally, at one critical point after another Mireles' testimony was contradicted by the many witnesses called by the Chief Investigator, and the evidence also included testimony of Sevilla, Barnes, Frias and Smith that prior to the sworn examinations in 1996, Mireles approached each of them and instructed them to testify falsely at their 1996 sworn IRB examinations. In their subsequent testimony, each corroborated the other with respect to the matters under inquiry as to which they initially gave false testimony. Each of these matters concerned conduct of Mireles and Roa, as

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[16] The IBT hearing panel found that Mireles testified falsely at both his 1996 and 1998 sworn examinations. IRB-12 at 17-18.

opposed to conduct for which any of these individual members could face exposure. Each of these witnesses as an employee (or in Barnes' case, as a consultant) of the Local served at Mireles' pleasure and faced the threat of termination for failure to follow Mireles' instructions. In 1998, Sevilla, Barnes, Frias and Smith voluntarily came to the Chief Investigator's office and revealed Mireles scheme with a willingness to accept the consequences of their prior actions. Even with the self-interest that Mireles claims they had, and which we have observed, as political opponents, their testimony is corroborated by the testimony of others, the TITAN records and even one of Mireles' witnesses, Patton.

We thus find that Mireles did himself testify falsely and also encouraged others to lie in their examination in 1996.

C. Roa Required Business Agents To Miss Making Timely Dues Payments

As set forth above, the testimony of Boardman, Barnes, Ruff, Sevilla, Wiley, Patton, King, McDonald, Sanzaro, and Frias established that Mireles implemented and maintained a scheme which required Business Agents not on dues check-off to miss a monthly dues payment to ensure ineligibility. The testimony of Sanzaro, Boardman, Ruff, Sevilla, Barnes, Smith, McDonald and Roa himself established that beginning in 1996 Roa enforced Mireles' requirements after Boardman left the Local. Roa' s claim in his IRB hearing testimony that he was unaware of the existence of a policy requiring missed dues payments is refuted by his prior testimony, his conduct reflected in the documentary evidence and the common knowledge of the scheme by Local employees. Roa's knowledge of this scheme is reflected by his testimony that Boardman had earlier told him to miss his dues; and by the TITAN records which reflected that Roa had missed paying his dues on only two occasions from January 1993 to the present, when Roa paid his dues for June 1994 on July 13, 1994 and when Roa paid his dues for February 1997 on

March 20, 1997. Ex. CI-25. This was the bare minimum required to ensure his ineligibility in both Local elections.

In contrast to Roa's blanket denials, the testimony of Sanzaro, McDonald, Ruff, Smith and Sevilla corroborated one another with respect to Roa's role in telling Business Agents to miss a monthly dues payment to insure their ineligibility for Local office under Mireles' scheme.

Finally, as with Mireles, we observed Roa as he testified before us and found him to lack credibility. We find on the charge against Roa that, at the direction of Mireles, he required Business Agents to miss making timely monthly dues payments so as to make them ineligible for voting in Local 952 elections.

IV. SANCTIONS

Based on the foregoing, the evidence established that Mireles and Roa brought reproach upon the IBT. Accordingly, we are imposing the following sanctions:

1. Mireles is barred from holding the position as an officer in the IBT or any related entity for a period of seven years and he is suspended from IBT membership for a period of four years.

2. Roa is barred from holding the position as an officer in the IBT or any related entity for a period of four years and he is suspended from IBT membership for a period of two years.

Members of the Independent
Review Board

/s/ Grant Crandall

/s/ Frederick B. Lacey

/s/ William H. Webster

Dated: October 17, 2000

## APPENDIX D

29 U.S.C. § 411(a)(1). *Equal Rights.*

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

29 U.S.C. § 411(a)(2). *Freedom of Speech and Assembly.*

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. § 412. *Civil action for infringement of rights; jurisdiction.*

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

29 U.S.C. § 529. *Prohibition on Certain Discipline by Labor Organization.*

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.